ILLINOIS POLLUTION CONTROL BOARD
November 15, 1973

ALLIED METAL COMPANY)
PETITIONER)
)
)
v.) PCB 73-244
)
)
ENVIRONMENTAL PROTECTION AGENCY)
RESPONDENT)
)

BENJAMIN R. COHEN, ATTORNEY, in behalf of ALLIED METAL COMPANY
KENNETH J. GUMBINER, ASSISTANT ATTORNEY GENERAL, in behalf of the ENVIRONMENTAL PROTECTION AGENCY

OPINION AND ORDER OF THE BOARD (by Mr. Marder)

This action involves a petition for hearing on denial of application for operating permit. Petitioner seeks relief from an Agency denial of operating permits for its Chicago facilities.

Allied Metal Company owns and operates a metal processing plant in a Chicago industrial area. In the course of its activities Allied operates two reverberatory furnaces, two sweat furnaces, two melting pots for zinc and one for lead, a boring drier and an afterburner.

Allied Metal Co., Petitioner, filed a Petition for Hearing on Denial of Application for Operating Permit on June 12, 1973, pursuant to Section 40 of the Environmental Protection Act (Illinois Revised Statutes, Chapter 111 1/2, Section 40) and Pollution Control Board Procedural Rule 502. Permits were denied by the Environmental Protection Agency, Respondent herein, for Petitioner's Sweat Furnaces #1 and #2 and Reverberatory Furnaces #1 and #2 because said emission sources are not in compliance. The Petition states that the emissions from its plant were in compliance with the Pollution Control Board's Air Pollution Regulations. The Respondent filed a Motion for Judgment on June 29, 1973, stating that the issues raised in the abovementioned Petition were all res judicata because of the Pollution Control Board's decision in a case concerning these same parties on a similar fact situation rendered on June 7, 1973, in favor of the Respondent, said case's caption being: Environmental Protection Agency vs. Allied Metal Co. PCB 72-164. The Petitioner filed a Response to said Motion on July 6, 1973, stating that this case raised a different issue than PCB 72-164 because Respondent's permit denial failed

to specifically identify or relate to the issues previously adjudged in PCB 72-164 to the instant case. The Board denied the Respondent's Motion for Judgment and allowed the case to come to hearing.

When a determination is made by the Board, in an Enforcement action, that an emission source is not in compliance with the Environmental Protection Act and the Regulations related thereto, there is a high possibility that a permit denial case on the same emission source will be considered res judicata unless there has been substantial change in the circumstances. An operating permit cannot be issued for an emission source that has been found to be in violation in an enforcement action. A second hearing on the permit denial is therefore repetitious and unnecessary. At first glance, the present case appears to fall under this general rule. There was an enforcement action, the abovementioned PCB 72-164, which found the emission sources in question in the instant case in violation of the Act. However, unlike the general rule, the Board here found that there was an issue which the enforcement action had not made res judicata. The case therefore went to hearing and is now before the Board on that issue.

The question of Petitioner's compliance with the Pollution Control Board's Air Pollution Regulations was first raised by the filing of an enforcement action by the Respondent on April 20, 1972, in the abovementioned case of PCB 72-164. In that case the Board's June 7, 1973, order adjudged the Petitioner guilty of causing air pollution, violating permit requirements and allowing excessive particulate emissions as charged in the complaint. The issue in this case concerns the Respondent's May 22, 1973, denial of Petitioner's application for an operating permit. The Petitioner's amended application in issue here was filed on April 26, 1973 (R. 108). The issue now before the Board is different than the issues raised in PCB 72-164. PCB 72-164 concerned whether there was a violation of the Air Pollution Regulations. This case is concerned with whether there is a legal basis for the Respondent's denial of the Petitioner's permit application for its sweat furnaces #1 and #2 and reverberatory furnaces #1 and #2. The finding of a different issue in this case is unique to the general rule stated above and will probably not be found to warrant a hearing on the permit denial in many cases.

A hearing was held on this case on September 24, 1973. The following facts were ascertained at the hearing. No members of the public were present at the hearing. Mr. Rama K. Chaturvedi was the Respondent's engineer in the Permit Department that processed the permit application (R. 17). Mr. Chaturvedi stated that the modified stack test provided by the Petitioner with the application did not show how many sources were running at the time the test was conducted (R. 50). In addition the Petitioner's modified stack test was plus or minus 50% of generally accepted isokinetic conditions. This is in excess of allowable tolerance. The Federal Environmental Protection Agency recommends plus or minus 10% (R. 51). The Permit Department

does not make a stack test but rather studies the application for a permit submitted and asks for more information if the application is incomplete (R. 58-59). In this case the application was sent back because inadequate information was given concerning the modified stack test. Information was requested as to whether the whole operation was running during the test, on how many sections of the plant was the stack test done, and several other deficiencies in the application (R. 61). Mr. Chaturvedi indicated that the amended application sent back by the Petitioner gave none of the information requested concerning the modified stack test (R. 62).

Mr. Chaturvedi testified that he used Document AP-42, Compilation of Air Pollutant Emission Factors, in his analysis of Petitioner's application and that the factors in AP-42 are valid (R. 64). Mr. Chaturvedi testified that another reason the Petitioner's stack test was invalid was because the application did not indicate whether all of the fans were running at the time of the test (R. 75). In order for the Respondent to form an opinion with regard to a permit application, the Respondent needs the whole stack test. If the application is deficient, then the Respondent is obligated to write the applicant and tell the applicant exactly what information is needed in order to give the applicant an opportunity to perfect their application, if that is possible (R. 77). This obligation was carried out in the instant case.

Mr. Marvin Fink, a Vice-President of Petitioner, stated that the stack test was made under normal operating conditions (R. 87).

Mr. Charles Licht, a consulting engineer for Petitioner, testified that he aided Petitioner in the filing of the application for operating permit. Mr. Licht testified that the emissions from Petitioner's plant were well within the limits of the applicable Regulations (R. 95-96).

On recall, Mr. Chaturvedi testified concerning how a permit application is accepted and analyzed by Respondent's Permit Department. The principal document used to determine whether all sources are in compliance with the applicable Regulations is AP-42 (R. 110). Mr. Chaturvedi used AP-42 to analyze the Petitioner's claim that the building itself was a pollution control device because its 75 foot high ceiling acted as a settling chamber. It was determined that Petitioner had mistakenly made its analysis on the basis of volume rather than by weight (R. 113). This resulted in an incorrect analysis by the Petitioner. Mr. Chaturvedi testified that the Petitioner's settling chamber theory is incorrect because the emissions coming out of the different sources are of the sizes which are much less than what a settling chamber could collect. Mr. Chaturvedi also determined from the Respondent's Surveillance Group that no solid materials were deposited in the Petitioner's building (R. 116-117). Mr. Chaturvedi testified that in his extensive industrial experience and his exper-

ience with the Environmental Protection Agency the applicable table in AP-42 does not indicate anything besides size distribution by weight (R. 130).

The Petitioner contends that the Respondent's opinion denying its permit is not based on valid criteria. The Board finds that the Respondent relied on valid scientific criteria in its analysis of the Petitioner's permit application. Under Section 40 of the Environmental Protection Act the burden of proof is on the Petitioner, and the Petitioner has not sustained its burden in contesting the decision of the Respondent. The data provided to the Respondent by the Petitioner was incomplete and inaccurate. The Petitioner's so-called modified stack test was incomplete as is evidenced in the above testimony and could not be relied on.

The Petitioner's theory that its building acted as a settling chamber was incorrect on its face. The Petitioner made an error in its application of a table in AP-42 by using volume rather than weight in its analysis. The Petitioner questioned the Respondent's use of AP-42, but it was apparent that Mr. Chaturvedi was well qualified in the use of the table, and Petitioner provided no credible expert testimony refuting Mr. Chaturvedi's use of AP-42.

The Permit Department of Respondent gave the Petitioner more than one opportunity to perfect its application. Evidence shows that the Respondent tried to give the Petitioner a reasonable opportunity to present the facts before its opinion was rendered. Here the Petitioner was given the right to amend its application; however, even a third application failed to provide the data that would have justified the issuance of a permit. Once an applicant does not avail itself of such opportunity, it is fair to assume that no data is in existence to justify the issuance of a permit.

This Opinion constitutes the findings of fact and conclusions of law of the Board.

ORDER

IT IS THE ORDER of the Pollution Control Board that the May 22, 1973, action of the Respondent denying the Petitioner's application for operating permit is affirmed. Allied Metal Company's petition is hereby denied.

IT IS SO ORDERED.

Mr. Seaman was not present.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, certify that the above Opinion and Order was adopted by the Board on the 15th day of November, 1973, by a vote of 4 to 0.